



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Cleta Mitchell, Esq.
Foley & Lardner
3000 K Street, NW, #500
Washington, DC 20007

MAR 26 2009

RE: MUR 5831
Santorum 2006
and Gregg R. Menliason, in his
official capacity as treasurer

Dear Ms. Mitchell:

On October 6, 2006, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 11, 2009, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Santorum 2006 and Gregg R. Menliason, in his official capacity as treasurer, violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your clients. The Factual and Legal Analysis, explaining the Commission's finding, is enclosed.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a long horizontal line extending to the right.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Santorum 2006 and Gregg R. Menlinson, **MUR: 5831**
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Commission by Stanley E. Levine. See 2 U.S.C. § 437g(a)(1). The complaint alleges that Softer Voices coordinated expenditures with Santorum 2006, Senator Santorum's principal campaign committee, resulting in Santorum 2006's receipt of excessive contributions from Softer Voices.

II. FACTUAL SUMMARY

Softer Voices, an entity organized under Section 527 of the Internal Revenue Code, allegedly spent over a million dollars, raised outside the limitations of the Federal Election Campaign Act of 1971, as amended, (the "Act") to influence the 2006 Senate election in Pennsylvania between Rick Santorum and Bob Casey. Softer Voices produced and broadcast several television advertisements focused on Rick Santorum. Two of the ads featured the story of how Rick Santorum hired Billy Jo Morton, a former welfare recipient, to work in one of his state offices.

The complaint in MUR 5831 alleges that Softer Voices made excessive in-kind contributions by coordinating expenditures for the advertisement "Billy Jo" with Santorum 2006. A payment for a coordinated communication constitutes an in-kind contribution to the candidate or committee with whom or which it is coordinated, and must be reported as an expenditure made by that candidate or committee. See 11 C.F.R. § 109.21(b)(1). A communication is coordinated with a candidate, an authorized committee, a political party committee, or agent

1 thereof if it meets a three-part test: (1) payment by a third party; (2) satisfaction of one of four
2 "content" standards; and (3) satisfaction of one of six "conduct" standards. See 11 C.F.R.
3 § 109.21.

4 In this matter, the first prong of the coordinated communication test is satisfied because
5 Softer Voices is a "person other than [the] candidate, authorized committee, political party
6 committee, or agent of any of the foregoing" that paid for the two television advertisements
7 featuring Ms. Merton. 11 C.F.R. § 109.21(a)(1). The second prong of this test, the content
8 standard, is satisfied because Softer Voices' television advertisements both identify Santorum
9 and qualify as "public communications" under 11 C.F.R. § 109.21(c)(4)(i) because they were
10 broadcast within 90 days of the general election.¹

11 The third prong, the conduct standard, is met if, *inter alia*, the communication is made at
12 the "request or suggestion" of the candidate or authorized committee or if the candidate or
13 committee "assents to the suggestion" of a person who is paying for the communication.
14 11 C.F.R. § 109.21(d)(1). The standard can also be met with the "material involvement" of the
15 candidate or authorized committee; or after "substantial discussion" with the relevant candidate
16 or committee. 11 C.F.R. § 109.21(d)(2)-(3). The "material involvement" conduct standard is
17 satisfied if a candidate or his authorized committee is materially involved in decisions regarding
18 the communication, such as its content, intended audience, means or mode, specific media outlet
19 used, timing or frequency, or size or prominence. See 11 C.F.R. § 109.21(d)(2). Similarly, a
20 "substantial discussion" has occurred if material information about the candidate's campaign
21 plans, projects, activities or needs is conveyed to a person paying for the communication.
22 11 C.F.R. § 109.21(d)(3).

¹ IRS reports indicate that Softer Voices paid its media vendors in September, October, and November 2006.

1 The complaint asserts that Softer Voices coordinated its use of the Billy Jo Morton story
2 with Santorum or his campaign by obtaining Santorum's "assent" to the expenditure through his
3 agreement to sell the rights to the story. Specifically, the complaint maintains that through his
4 alleged control over the sale of the book rights, Santorum was in a position to decide whether or
5 not a Softer Voices ad focused on the Morton story would be produced and broadcast. Thus, the
6 complaint concludes that the nature of the book rights process allowed Santorum to control or
7 influence Softer Voices' communications and this amounted to a coordinated communication
8 under 11 C.F.R. § 109.21(d)(1). The Santorum Committee, however, denied any involvement
9 with the publisher regarding the sale or use of the story. Given this denial, and without any
10 information presented indicating that Santorum may have coordinated with Softer Voices to use
11 the Morton story by selling the rights to the story, there is an insufficient basis for an
12 investigation into whether there may have been coordination in this matter.

13 Accordingly, there is no reason to believe that Santorum 2006 and Gregg R. Menlinson,
14 in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434 by accepting and failing
15 to report excessive in-kind contributions.